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VOLUME TWO

EXHIBITS

MISCELLANEOUS DOCUMENTS



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
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April 27, 2016

Captain Steven Katz
Homicide Bureau
Los Angeles County Sheriff's Department
1 Cupania Circle
Monterey Park, California 91755

Dear Captain Katz:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 2, 2015, non-fatal shooting of Jesse Grijalva by Los Angeles County Sheriff's Department Sergeant Brady Kline, Deputies Mario Marquez, Brian Gemmill, John Strosnider, Joseph Mendoza, and Anthony Velasco. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

By

JAMES GARRISON
Head Deputy District Attorney
Justice System Integrity Division

c: Sergeant Brady Kline, #[redacted]
Deputy Mario Marquez, #[redacted]
Deputy Brian Gemmill, #[redacted]
Deputy John Strosnider, #[redacted]
Deputy Joseph Mendoza, #[redacted]
Deputy Anthony Velasco, #[redacted]

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MEMORANDUM

TO: CAPTAIN STEVEN KATZ
Homicide Bureau
Los Angeles County Sheriff's Department
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Jesse Grijalva
J.S.I.D. File #15-0532
L.A.S.D. File #015-12211-1410-055

DATE: April 27, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 2, 2015, non-fatal shooting of Jesse Grijalva by Los Angeles County Sheriff's Department (LASD) Sergeant Kline, Deputies Marquez, Gemmill, Strosnider, Mendoza, and Velasco. It is our conclusion that Sergeant Kline, Deputies Marquez, Gemmill, Strosnider, Mendoza, and Velasco acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on October 3, 2015, at approximately 4:46 a.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on reports submitted to our office by LASD Detectives Blagg and Morales. The reports include photographs, audio-recorded interviews of witnesses, and radio transmissions.

FACTUAL ANALYSIS

On October 2, 2015, at approximately 11:30 p.m., an employee of the Jack-in-the-Box located at 13361 Crossroads Parkway North, in the City of Industry, called to report a male acting strangely and yelling in front of the restaurant. LASD Deputy Muehlich, who was assigned to Industry Station, responded to the call and saw a Chevrolet Spark parked in the driveway of Fry's Electronics.[1] Muehlich saw a male, later identified as Jesse Grijalva, who matched the description given in the radio call, standing outside the driver's door of the vehicle and another male sitting in the front passenger seat, later identified as [redacted] (hereinafter referred to as [redacted]).[2]

[1] Fry's Electronics is located in the same shopping center as Jack-in-the-Box and bears the address of 13401 Crossroads Parkway North, City of Industry.
[2] Jesse Grijalva, Sr. is a 41 year old male, 6 feet 2 inches and 240 pounds.

As Muehlich approached the vehicle, Grijalva ran south toward the Fry's Electronics. Grijalva produced a handgun and continued to run away toward the rear of the Fry's Electronics building. Muehlich initiated an emergency broadcast over his radio that a male armed with a handgun was running from him.

A Sheriff's air unit spotted Grijalva hiding in a bush on the top of an embankment that parallels the 60 freeway and is located to the rear of the Fry's Electronics building. A team of 12 deputies formulated a plan to contain Grijalva and made their way to the east parking lot of Fry's Electronics.

Strosnider heard the air unit broadcast that Grijalva was hiding in the bushes. Strosnider was parked in the Fry's Electronics parking lot and saw Deputy Velasquez driving his vehicle through the parking lot and stopped him to get into his vehicle.[3] The air unit directed Velasquez to drive to the east side of the parking lot and to take cover behind two trucks that were parked in the lot. Velasquez stopped his patrol car alongside a patrol car driven by Deputy Gemmill facing in a southwest direction, forming a "V" position.

The air unit illuminated the location where Grijalva was hiding on the embankment. Strosnider estimated Grijalva was approximately 50 to 80 yards away from his location.

Strosnider saw one or two muzzle flashes and then heard gunshots coming from where Grijalva was positioned. Strosnider heard Grijalva's rounds ricochet off the ground, approximately eight feet in front of him. He also heard rounds go over his head and the sound of bullets impacting a patrol car. Strosnider pointed his Beretta, model 92FS, 9mm handgun and fired 15 rounds in the direction of the muzzle flashes. Strosnider stopped shooting at Grijalva when he no longer saw muzzle flashes coming from Grijalva's location.

Strosnider overheard the air unit broadcast that Grijalva was lying down and not moving. Strosnider saw Grijalva lying on his right side, facing north. Strosnider then saw Grijalva point a handgun at his direction. Strosnider fired one round at Grijalva. Strosnider described Grijalva's handgun as gray colored and "very shiny." Strosnider saw Grijalva put his weapon down. Strosnider did not fire any more rounds and maintained his position at Velasquez' car for approximately 20 minutes, until the Special Enforcement Bureau (SEB) drove their armored vehicles in front of the patrol cars and relieved him from his position.

Deputy Marquez heard between two and four rounds being fired in his direction that were coming from the direction of where Grijalva was hiding.[4] Marquez also heard "cracks" of the bullets impacting the ground within ten feet of him. Marquez heard rounds impacting the patrol cars. He believed the rounds were being directed towards him and became frightened.

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[3] Strosnider is assigned to the Industry Station and was at the station when he heard the emergency radio call from Muehlich.

[4] Marquez and Gemmill were partners assigned to the Industry Station. [redacted] when they heard the emergency radio call from Muehlich. Marquez and Gemmill responded to the call together.

Marquez' handgun was equipped with a laser that he used to target Grijalva's location. As Marquez was using his laser, he saw Grijalva facing toward him and the other deputies with an object in his right hand, which he believed was a handgun. Marquez estimated he was approximately 75 yards from Grijalva. Marquez was in fear for his safety as well as the safety of his partners. Marquez was also in fear for the safety of the occupants in a mobile home park that was located to the east of Grijalva's position. Marquez pointed his Heckler & Koch .45 caliber handgun at Grijalva and fired 12 rounds.

Marquez shouted commands at Grijalva to give himself up but Grijalva did not respond. Marquez then heard approximately three rounds being fired and saw muzzle flashes coming from Grijalva's location toward him. Marquez fired five or six more rounds from his handgun toward Grijalva. Marquez took cover behind a truck and maintained his position until deputies from SEB relieved him.

Deputy Gemmill heard several gunshots once he exited his vehicle and heard bullet impacts closely around him. Gemmill heard other deputies returning gunfire at Grijalva and became aware of Grijalva's location once Marquez used his laser from his handgun to illuminate Grijalva's position on the embankment. Gemmill saw Grijalva on top of the embankment and heard a gunshot. Gemmill saw one muzzle flash coming from Grijalva's direction. Gemmill believed that Grijalva was firing at him and pointed his Sig Sauer, model P226, 9mm handgun at Grijalva and fired two rounds. Gemmill saw another muzzle flash coming from Grijalva's location and believed he was being shot at again. Gemmill pointed his handgun at Grijalva and fired two more rounds. Gemmill saw Grijalva collapse toward the ground.

Deputy Mendoza was parked in a patrol vehicle behind Velasquez and Gemmill. Mendoza took cover and was next to Velasquez.[5] Mendoza saw Grijalva moving around on the embankment behind the bushes and estimated that Grijalva was approximately 70 to 80 yards away and south from his position.

Mendoza saw a muzzle flash and heard a gunshot coming from the area where Grijalva was located. Mendoza believed Grijalva was shooting at him and yelled to Grijalva to drop his weapon. Grijalva did not respond and, in fear for his life, Mendoza fired two rounds from his Remington, model 80, 12 gauge shotgun in the direction where Grijalva was located. Mendoza still saw movement from where Grijalva was hiding and felt there was still a threat to himself and the other deputies. Mendoza fired two additional rounds from his shotgun toward Grijalva. Grijalva continued to move and Mendoza fired four more rounds from his shotgun. Mendoza reloaded the shotgun with additional shotgun shells and saw Grijalva continue moving in the bushes. Mendoza also saw a shiny object in the area where Grijalva was hiding which he believed was a gun. Mendoza felt there was an imminent threat and fired one or two more rounds toward Grijalva. The air unit broadcast that Grijalva was lying on his back on the ground and Mendoza maintained his position until deputies from SEB relieved him from his position.

[5] Mendoza is assigned to Industry Station and was at the station when he heard the emergency radio call from Muehlich.

Deputy Velasco was in Velasquez' patrol vehicle, traveling east in the north parking lot of Fry's Electronics, when he heard a faint gunshot but did not know where it had come from.[6] Once the patrol car stopped, Velasco took cover behind a truck.

As Velasco was hiding behind the truck, he heard four or five additional gunshots and believed they were coming from south of his position. Velasco heard another two or three gunshots and saw a muzzle flash coming from the embankment, 50 yards south of his position. Velasco heard rounds go by him and saw another round impact the hood of Velasquez' patrol car. Velasco fired several rounds from his Colt M-4 assault rifle in the area where he saw the muzzle flashes coming from. Velasco heard two or three more gunshots and saw a muzzle flash coming from the embankment and fired numerous rounds at Grijalva from his assault rifle. The air unit broadcast that Grijalva was not moving and Velasco maintained his position of cover until SEB relieved him.

Sergeant Kline parked his patrol vehicle near the other patrol cars.[7] Kline exited and took cover behind a truck. Kline saw three to four muzzle flashes and heard gunshots. Both the muzzle flashes and gunshots were coming from the embankment where Grijalva was hiding. Kline believed that the gunshots were directed at him and sought cover behind the engine block of the truck. Kline heard other deputies engage Grijalva and return gunfire at him.

Kline saw the embankment was illuminated by the air unit's spotlight and was able to see that Grijalva was approximately 50 and 60 yards south of his position.

Kline saw an additional muzzle flash from Grijalva's location and believed the flash was directed toward him and the deputies. Kline was unable to shoot but saw other deputies engage in gunfire with Grijalva. The air unit broadcast that Grijalva was lying on his back. Kline saw another muzzle flash and heard one gunshot coming from Grijalva's location toward his direction. Kline believed Grijalva posed an imminent danger to himself and the other deputies and pointed his Smith & Wesson, model M&P, 9mm handgun at Grijalva, and fired between four and seven rounds in the direction of where Grijalva was located.

Kline ordered deputies to "cease fire" and the shooting stopped. Shortly after, deputies from SEB arrived and took over.

Grijalva's [redacted] was interviewed at the scene and stated that Grijalva had been displaying signs of depression and paranoia for the past month since the finalization of Grijalva's divorce.

[redacted] said he and Grijalva were driving on the 60 freeway when Grijalva told him he needed to urinate and wanted a beverage. Grijalva exited the freeway and drove his vehicle into the driveway of Fry's Electronics. Grijalva parked the vehicle and walked over to the adjacent Chevron gas station. Grijalva returned, smoked a cigarette, and then told [redacted] he was going to

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[6] Velasco is assigned to Industry Station and was in his patrol car when he heard the emergency radio call from Muehlich. Velasco parked his car in the parking lot of Fry's Electronics and got into the patrol car driven by Velasquez. Velasco was seated in the front passenger seat while Strosnider was seated in the back seat.
[7] Sergeant Kline is assigned to Industry Station and [redacted] in the City of Industry when he heard the emergency radio call from Muehlich.

urinate. [redacted] waited in the vehicle while Grijalva was gone. After about five to ten minutes, [redacted] telephoned Grijalva because he was taking an exceptional amount of time to urinate. [redacted] believed the reason Grijalva was taking so long was because he was "snorting meth." As the two spoke over the phone, Grijalva was exhibiting paranoid behavior.

Grijalva returned to their vehicle and Grijalva was standing outside the driver's door of the vehicle, talking to him through the open driver's side window as [redacted] was seated in the passenger's seat. Grijalva was "hyped up," and talking rapidly. [redacted] confronted his [redacted] about his suspicion that he used methamphetamine and Grijalva admitted that he had been abusing it.

[redacted] said that while he and Grijalva were talking, a police officer pulled up behind their vehicle in a "squad car." [redacted] said when Grijalva saw Muehlich, he lit a cigarette, and told [redacted] "I love you [redacted] You're gonna carry on my [redacted] This is it. I love you." Grijalva began to walk backwards, away from Muehlich's direction and turned around, running south toward the west side of the Fry's Electronics building. Grijalva stopped and hid behind a corner of a small structure that was parallel to the building's west wall. [redacted] saw Grijalva facing him and Muehlich's direction, holding a silver .45 caliber semiautomatic handgun down by his side, in his right hand. Muehlich ordered Grijalva to drop his weapon and [redacted] pleaded for his [redacted] to return.

[redacted] believed that his [redacted] wanted to commit suicide and wanted to be shot. Grijalva had expressed suicide ideation to [redacted] in the past and told [redacted] that he wanted to die while riding his motorcycle or die in a shootout.

Grijalva sustained two gunshot wounds to his lower extremities and had a possible exit would to his back. He survived his injuries.

Grijalva waived his Miranda rights and was interviewed. Grijalva said his [redacted] was very emotional and making him feel depressed due to [redacted] outbursts. Grijalva and his [redacted] had been divorced and it was difficult on [redacted]

Before the incident, Grijalva said he and his [redacted] left a friend's party and were driving on the freeway when he exited to get a beverage and to urinate. After stopping, he and [redacted] got into an argument. During the argument, [redacted] became emotional. At some point during the argument, Muehlich pulled his patrol car behind their car. Grijalva said he needed time to think and walked away from Muehlich.

Grijalva admitted that he had a .40 caliber semiautomatic handgun inside his right front pants pocket. His handgun was loaded with a magazine containing six rounds. Grijalva walked up the hill and remembered hearing the helicopter tell him to crawl down the hill and surrender.

Grijalva fired his gun four or five times in hopes that deputies would shoot and kill him. He said he fired one or two rounds and then stopped. He fired another one or two rounds and stopped again when his gun was empty. He knew he had not shot any of the deputies because he pointed the barrel of the gun in the air when he fired it.

Grijalva remembered the deputies shooting back at him and felt the bullets impact his body. He hoped one of the bullets would have hit him in the head. He eventually crawled down the hill and surrendered to deputies. Grijalva told investigators that his [redacted] was driving him crazy and, because of that reason, he wanted the deputies to kill him. He said he had never been suicidal in the past.

When asked if he thought he hurt anyone, Grijalva replied, "I really hope not." Grijalva further stated, "Was I wrong? Yeah, I guess I was wrong. I wasn't in my right state of mind, I'll tell you that."

Grijalva was charged with six counts of assault with a deadly weapon on a peace officer and one count of possession of a concealed weapon in case number KA110868. The case is set for preliminary hearing setting on May 3, 2016.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight…The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 U.S. 386, 396-397.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

An officer is not constitutionally required to wait until he sets eyes upon a weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun. *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. "Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

In this case, Sergeant Kline, Deputies Marquez, Gemmill, Strosnider, Mendoza, and Velasco were all justified in firing at Grijalva in order to protect themselves and the lives of others.

Based on the foregoing, we are closing our file and will take no further action in this matter.